

1 The opinion in support of the decision being entered today was *not* written
2 for publication in and is *not* binding precedent of the Board.

3
4 UNITED STATES PATENT AND TRADEMARK OFFICE

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7 BEFORE THE BOARD OF PATENT APPEALS
8 AND INTERFERENCES

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11 *Ex parte* JOHN KENYON GERKEN III, THOMAS JOSEPH PROROCK and
12 WILIAM S. WERDEL

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15 Appeal 2006-3441
16 Application 09/672,435
17 Technology Center 3600

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21 Decided: March 29, 2007

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24 Before STUART S. LEVY, ROBERT E. NAPPI and ANTON W. FETTING,
25 *Administrative Patent Judges.*

26 FETTING, *Administrative Patent Judge.*

27 DECISION ON APPEAL

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30 STATEMENT OF CASE

31 This appeal involves claims 1-45. Claims 46-57 are withdrawn from
32 consideration. Claim 1-57 are the only claims pending in this application. We
33 have jurisdiction over the appeal pursuant to 35 U.S.C. §§ 6 and 134.

34 We AFFIRM .

1 The Appellants invented a device that functions to preapprove the payment for
2 a retail sales transaction prior to the actual ringing of the transaction. In effect, it
3 decouples the existing time consuming payment process occurring at the back-end
4 of the sales transaction and thereby improves the overall checkout time.
5 (Specification 2). An understanding of the invention can be derived from a reading
6 of exemplary claim 1, which is reproduced below.

7 1. A method for accelerating sales transactions of customers in a
8 retail store, comprising the acts of:
9 reading a customer payment card number at a customer checkout
10 accelerator;
11 determining a preapproval amount for the sales transaction;
12 displaying the preapproval sales transaction amount to the customer
13 on the customer checkout accelerator for acceptance;
14 transmitting the preapproval amount to an external card services
15 system for approval; and
16 storing the approval amount in a preapproval cache at a point of sales
17 terminal for use in completing the sales transaction.

18 This appeal arises from the Examiner's Final Rejection, mailed November 12,
19 2004. The Appellants filed an Appeal Brief in support of the appeal on October
20 28, 2005, and the Examiner mailed an Examiner's Answer to the Appeal Brief on
21 June 1, 2006. The Appellants filed a Reply Brief on July 21, 2006.

PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Bigari	US 5,010,485	Apr. 23, 1991
Yanagawa	US 5,535,407	Jul. 9, 1996
Terranova	US 6,098,879	Aug. 8, 2000
Heady	US 6,275,200 B1	Aug. 14, 2001

REJECTIONS

Claims 1, 5, 8, 11, 24 and 33 stand rejected under 35 U.S.C. § 103(a) as obvious over Bigari and Heady.

Claims 2-4 and 25-28 stand rejected under 35 U.S.C. § 103(a) as obvious over Bigari, Heady and Yanagawa.

Claims 15-23 and 37-45 stand rejected under 35 U.S.C. § 103(a) as obvious over Bigari, Heady and Terranova.

Essentially, the Examiner applied Bigari for its teachings regarding the transmission of a maximum charge amount for preapproval to a card provider, Heady for its teachings regarding POS terminal implementation details, Yanagawa for its teachings regarding details of back office servers that communicate with POS terminals, and Terranova for its teachings of a specific implementation of POS terminals that allow for customer interaction.

ISSUES

The issues pertinent to this appeal based on the Appellant's contentions in the Brief pp. 6-21 are:

- Whether the applied art shows storing the approval amount in a preapproval cache at a point of sales terminal for use in completing the sales transaction (claims 1 and 24).
- Whether there is motivation to combine the applied art (all claims).
- Whether the applied art shows transmitting the preapproval amount from the customer checkout accelerator to a store controller (claims 2 and 25).
- Whether the applied art shows placing an entry in a preapproval database if the external card services system approves the transaction amount (claims 3 and 26).
- Whether the applied art shows notifying a point of sales terminal of the approval amount (claims 4 and 27).
- Whether the applied art shows program instructions that determine if the payment card is one or more of a credit card, a debit card, a customer loyalty card, an electronic/Internet wallet or an electronic gift certificate (claim 28).
- Whether the applied art shows creating a record of any additional items added to the sales transaction and appending the additional items record to a preapproval database entry for the sales transaction (claims 16, 21, 38 and 43).
- Whether the applied art shows reading the additional items record into a sales transaction record at a point of sale terminal (claim 17).

- 1 • Whether the applied art shows updating a vendor-based tracking database to
2 bill the vendor for displaying a vendor advertisement on the customer
3 checkout accelerator when the approval from the external card services
4 system is approved (claims 18 and 40).
- 5 • Whether the applied art shows configuring a selection of additional
6 categories of items to be displayed on the customer checkout accelerator
7 based on customer preferences wherein some or all of the categories of items
8 can be made available through a hyperlink to one or more Internet web sites
9 and storing the category selections in a customer loyalty database that is
10 maintained by the retail store (claims 19 and 41).
- 11 • Whether the applied art shows updating a vendor-based tracking database to
12 bill the vendor for displaying on the customer checkout accelerator a vendor
13 advertisement for merchandise that can be made available through a
14 hyperlink to the vendor's Internet web site when the approval from the
15 external card services system is approved (claims 23 and 45).

FACTS PERTINENT TO THE ISSUES

The following Findings of Fact are supported by a preponderance of substantial evidence.

- 1) A point of sales (POS) terminal is a customer checkout accelerator, in that a POS terminal accelerates customer checkout.
- 2) Heady show using a point of sales terminal for use in completing the sales transaction and that cache memory may be used for storing data (Heady, col. 5, ll. 7-27).
- 3) Bigari shows storing the maximum charge that is asked for preapproval at the microprocessor at which sales takes place, following approval in the same general memory as the preapproval detail amounts (Bigari, col. 8, ll. 6-10).
- 4) Thus, the applied art suggests storing the approval amount in a preapproval cache at a point of sales terminal for use in completing the sales transaction (claims 1 and 24).
- 5) Bigari shows transmitting the preapproval amount from the customer checkout accelerator to a store controller (Bigari, col. 7, ll. 30-35).
- 6) Thus, the applied art shows transmitting the preapproval amount from the customer checkout accelerator to a store controller (claims 2 and 25).
- 7) Heady shows that sales entries are entered in an accounting database for a sales transaction (Heady, col. 2, ll. 25-44).

1 8) The amounts such as that where preapproval is sought and that
2 where the external card services system has approved the transaction
3 amount are part of the accounting for sales, and therefore, Heady's
4 accounting database would include such amounts.

5 9) Thus, the applied art shows placing an entry in a preapproval
6 database if the external card services system approves the transaction
7 amount (claims 3 and 26).

8 10) Bigari shows notifying a point of sales terminal of the approval
9 amount (Bigari, col. 8, ll. 6-10).

10 11) Thus, the applied art shows notifying a point of sales terminal
11 of the approval amount (claims 4 and 27).

12 12) Bigari shows a program containing instructions that determine
13 if the contents of a payment card, which would inherently identify
14 whether the card is one or more of a credit card, a debit card, a
15 customer loyalty card, an electronic/Internet wallet or an electronic
16 gift certificate (Bigari, col. 4, ll. 1-7).

17 13) Thus, the applied art shows program instructions that determine
18 if the payment card is one or more of a credit card, a debit card, a
19 customer loyalty card, an electronic/Internet wallet or an electronic
20 gift certificate (claim 28).

21 14) Terranova shows creating a record of any additional items
22 added to the sales transaction with a shadow ledger which would be
23 appended to an additional items record which would be in Heady's

1 preapproval database entry for the sales transaction (Terranova, col. 9,
2 ll. 5-13 and col. 35, ll. 45-67).

3 15) Thus, the applied art shows creating a record of any additional
4 items added to the sales transaction and appending the additional
5 items record to a preapproval database entry for the sales transaction
6 (claims 16, 21, 38 and 43).

7 16) Terranova shows shows reading the additional items record into
8 a sales transaction record at a point of sale terminal (Terranova, col. 9,
9 ll. 5-13 and col. 35, ll. 45-67).

10 17) Thus, the applied art shows reading the additional items record
11 into a sales transaction record at a point of sale terminal (claim 17).

12 18) Terranova shows displaying a vendor advertisement on the
13 customer checkout accelerator (Terranova, col. 1, ll. 48-55).

14 19) The Examiner has taken official notice of the convention to
15 track advertising expenditures and bill those on whose behalf the
16 advertising was placed (Answer 6).

17 20) The Appellants challenge this official notice (Br. 17-19) but do
18 not provide any evidence or even a rationale that the official notice is
19 incorrect. We agree that the convention to track advertising
20 expenditures and bill those on whose behalf the advertising was
21 placed is a notoriously well known practice in sales advertising and
22 promotion systems.

1 21) Similarly, the accounting convention of timing all revenue
2 recognition based on the transactions that create the revenue is
3 notoriously old and well known.

4 22) Therefore, it would have been obvious to a person of ordinary
5 skill in the art to have updated the revenue tracking accounting
6 databases for any advertising billing at the same time as the
7 transactions that produced the revenue that the advertising related to.

8 23) Thus, the applied art suggests updating a vendor-based tracking
9 database to bill the vendor for displaying a vendor advertisement on
10 the customer checkout accelerator when the approval from the
11 external card services system is approved (claims 18 and 40).

12 24) Terranova shows configuring a selection of additional
13 categories of items to be displayed on the POS terminal based on
14 customer preferences (Terranova, col. 9, ll. 5-13 and col. 35, ll. 45-67)
15 wherein some or all of the categories of items can be made available
16 through a hyperlink to one or more Internet web sites (Terranova, col.
17 10, ll. 60-63) and storing the category selections in a customer loyalty
18 database that is maintained by the retail store (Terranova-Loyalty
19 Benefits, col. 14, l. 34 to col. 15, l. 37).

20 25) Thus, the applied art shows configuring a selection of
21 additional categories of items to be displayed on the customer
22 checkout accelerator based on customer preferences wherein some or
23 all of the categories of items can be made available through a
24 hyperlink to one or more Internet web sites and storing the category

1 selections in a customer loyalty database that is maintained by the
2 retail store (claims 19 and 41).

3 26) Similarly, harkening back to (FF 23), the applied art shows
4 updating a vendor-based tracking database to bill the vendor for
5 displaying on the customer checkout accelerator a vendor
6 advertisement for merchandise that can be made available through a
7 hyperlink to the vendor's Internet web site when the approval from the
8 external card services system is approved (claims 23 and 45).

9 27) Heady shows the details of POS terminals (Heady, col. 4-6).

10 28) Bigari shows a suggested transaction flow using POS terminals,
11 and a mechanism for adding POS terminals to a network, such as
12 those POS terminals of Heady (Bigari, col. 1-4).

13 29) Yanagawa shows the details of a back office system for POS
14 terminals, such as those of Heady (Yanagawa, col. 1-2).

15 30) Terranova shows a physical embodiment of a POS terminal,
16 such as those of Bigari, that allows customer interaction (Terranova,
17 Summary of Invention, col. 1).

18 31) Thus, a person of ordinary skill in the art would have been
19 motivated to combine the applied art for the implementation details of
20 Heady, Bigari and Yanagawa and the benefits of customer interaction
21 of Terranova (all claims).

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ANALYSIS

Claims 1, 5, 8, 11, 24 and 33 rejected under 35 U.S.C. § 103(a) as obvious over Bigari and Heady.

The above Findings of Fact demonstrate by a preponderance of substantial evidence that:

- The applied art shows storing the approval amount in a preapproval cache at a point of sales terminal for use in completing the sales transaction (FF □4) (claims 1 and 24).
- There is motivation to combine the applied art (FF □31) (all claims).

Accordingly we sustain the examiner's rejection of claims 1, 5, 8, 11, 24 and 33 under 35 U.S.C. § 103(a) as obvious over Bigari and Heady.

Claims 2-4 and 25-28 rejected under 35 U.S.C. § 103(a) as obvious over Bigari, Heady and Yanagawa.

The above Findings of Fact demonstrate by a preponderance of substantial evidence that:

- The applied art shows transmitting the preapproval amount from the customer checkout accelerator to a store controller (FF □6) (claims 2 and 25).
- The applied art shows placing an entry in a preapproval database if the external card services system approves the transaction amount (FF □9) (claims 3 and 26).

- 1 • The applied art shows notifying a point of sales terminal of the approval
2 amount (FF □11) (claims 4 and 27).
- 3 • The applied art shows program instructions that determine if the payment
4 card is one or more of a credit card, a debit card, a customer loyalty card, an
5 electronic/Internet wallet or an electronic gift certificate (FF □13) (claim
6 28).
- 7 • There is motivation to combine the applied art (FF □31) (all claims).

8 Accordingly we sustain the examiner's rejection of claims 2-4 and 25-28 under
9 35 U.S.C. § 103(a) as obvious over Bigari, Heady and Yanagawa.

10
11 *Claims 15-23 and 37-45 rejected under 35 U.S.C. § 103(a) as obvious over Bigari,*
12 *Heady and Terranova.*

13 The above Findings of Fact demonstrate by a preponderance of substantial
14 evidence that:

- 15 • The applied art shows creating a record of any additional items added to the
16 sales transaction and appending the additional items record to a preapproval
17 database entry for the sales transaction (FF □15) (claims 16, 21, 38 and 43).
- 18 • The applied art shows reading the additional items record into a sales
19 transaction record at a point of sale terminal (FF □17) (claim 17).
- 20 • The applied art suggests updating a vendor-based tracking database to bill
21 the vendor for displaying a vendor advertisement on the customer checkout
22 accelerator when the approval from the external card services system is
23 approved (FF □23) (claims 18 and 40).

- The applied art shows configuring a selection of additional categories of items to be displayed on the customer checkout accelerator based on customer preferences wherein some or all of the categories of items can be made available through a hyperlink to one or more Internet web sites and storing the category selections in a customer loyalty database that is maintained by the retail store (FF ¶25) (claims 19 and 41).
- The applied art shows updating a vendor-based tracking database to bill the vendor for displaying on the customer checkout accelerator a vendor advertisement for merchandise that can be made available through a hyperlink to the vendor's Internet web site when the approval from the external card services system is approved (FF ¶26) (claims 23 and 45).
- There is motivation to combine the applied art (FF ¶31) (all claims).

Accordingly we sustain the examiner's rejection of claims 15-23 and 37-45 under 35 U.S.C. § 103(a) as obvious over Bigari, Heady and Terranova.

DECISION

To summarize, our decision is as follows:

- The rejection of claims 1, 5, 8, 11, 24 and 33 under 35 U.S.C. § 103(a) as obvious over Bigari and Heady is sustained.
- The rejection of claims 2-4 and 25-28 under 35 U.S.C. § 103(a) as obvious over Bigari, Heady and Yanagawa is sustained.
- The rejection of claims 15-23 and 37-45 under 35 U.S.C. § 103(a) as obvious over Bigari, Heady and Terranova is sustained.

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

JRG

· · · Appeal 2006-3441
Application 09/672,435

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